

REPORT OF THE COMMITTEE ON CONTRACT COMPLIANCE

July 13, 2006

The Honorable,
The Board of Commissioners of Cook County

ATTENDANCE

Present: Chairman Steele, Commissioners Maldonado, Moreno and Peraica (4)

Absent: Vice Chairman Silvestri and Commissioners Goslin and Butler (3)

Also Present: Commissioner Collins; Betty Hancock Perry – Contract Compliance Administrator, Office of Contract Compliance; Colette Holt – Attorney at Law and MBE/WBE Consultant; Michael Prinzi – Division Chief, Transactions, Municipal Litigation & Real Estate Taxation Division, States Attorney's Office

Ladies and Gentlemen:

Your Committee on Contract Compliance of the Board of Commissioners of Cook County met for informational purposes only pursuant to notice on Thursday, July 13, 2006, at the hour of 10:00 A.M., in the Board Room, Room 569, County Building, 118 North Clark Street, Chicago, Illinois.

Chairman Steele introduced Colette Holt, Attorney at Law and MBE/WBE Consultant. Chairman Steele stated that the original construction piece of the MBE/WBE Ordinance was deemed unconstitutional, and that Ms. Holt has been working to restore constitutionality to this piece of the Ordinance.

At Chairman Steele's request, the Secretary read the Notice into the record.

Ms. Holt delivered the following presentation concerning her report, which is entitled "Review of Compelling Evidence of Discrimination against MBE/WBEs":

Race- and gender-conscious programs are subject to the highest level of judicial review, which is called "strict constitutional scrutiny." The government agency bears the burden of proving that its programs are constitutional. Racial goals cannot be calculated proportionate to the County's population. Economic development is not seen as an adequate motive. Discrimination must be proven to be marketplace driven or business driven, and not societal.

The following statistics must be compiled regarding MBE/WBEs: government utilization, availability, disparities in the rate that regular and MBE/WBEs are formed, and disparities regarding their experience and access to capital. Anecdotal evidence seems to be increasingly accepted over the past several years, however alone it does not suffice. Evidence must be shown regarding the current effects of past biases and exclusions of the industries being studied.

A governmental program must be narrowly tailored. You must be able to prove that your program implemented race-neutral measures. Your goals must have a solid relationship to the availability of MBE/WBEs, and you must engage in contract-specific goal setting. Simply setting quotas will not work.

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Your program must be flexible; you must be able to give waivers. If you don't, it's a quota. You must be aware of the adverse impact on third parties; and make sure it is not too difficult to contract with the agency. Finally, there must be some limit on the program – a regular review with a sunset date is critical.

Ms. Holt gave an overview of the cases that her Report reviewed. She stated that this information would be available as an appendix on disk to anyone who is interested.

Ms. Holt continued: In the Report she reviewed the County's utilization of MBE/WBEs, breaking it down into the period when the program was in effect (1993-2000) and the period since the injunction (although the records for this period are limited). During the period of 1993 to 2000, the County had a 30% MBE and a 10% WBE goal, and MBE/WBEs received approximately 25% of the professional services prime consultant dollars and almost 24% of the prime construction dollars, and approximately 23% of the construction subcontractor dollars. Records are not available as to the sub-consultant utilization.

Since the striking down of the Ordinance in 2000, the County, in compliance with the Court, has stopped setting MBE/WBE goals; there have been drastic reductions on the construction side. However, MBE/WBEs received 49% of the professional services prime consultant programs. MBE/WBE s received approximately 17% of the construction contracts.

Ms. Holt continued by presenting the recommendations for an interim MBE/WBE Construction Program:

The County needs to conduct a disparity study. This study should include five years' worth of data, as well as availability estimates, utilization analysis, disparity testing on both the County's own data and in the private sector, and anecdotal evidence. Credit and business experience surveys should be done. Race- and gender-neutral initiatives should be enacted. Enhanced prime contractor record keeping should be encouraged. The County should un-bundle contracts where possible. Existing prompt payment policies should be enforced. The County should review bonding and insurance requirements. It should require that subcontractors receive prior approval before being substituted on the job. The County should consider adopting: a financing and bonding program; a small business set-aside program; a mentor-protégé program; a business assistance program; and a commercial non-discrimination complaint procedure.

Regarding race- and gender-conscious remedies, Ms. Holt recommends that a personal-net-worth test and size restrictions be required, and that the County move to contract-by-contract goal setting. There should be a review of contract award procedures. There must be good faith efforts language in the special conditions area of the bids document. Contracts must be monitored.

These recommendations will require additional funding. Also, the program must be integrated into the overall County culture, not only the Contract Compliance Department, and specifically into other departments that handle construction.

Ms Holt reiterated that there must be a sunset date to ensure the Courts that Cook County will continue to gather evidence and fulfill its obligations to the Court.

Betty Hancock Perry, Contract Compliance Administrator, Office of Contract Compliance, provided the following status report: Her Department has been working with the MIS Department and are about to launch a test pilot to gather information regarding disparity and availability among MBE/WBEs and non-

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minority vendors. They are waiting for Ms. Holt to approve of this test pilot. They have also worked with the Purchasing Department and Capital Planning. They've begun to put together a training program for the purchasing personnel of all County elected officials, including the Assessors and Sheriff's Office. Her Department has also been working with the Procurement Department.

Commissioner Maldonado inquired as to what the next step would be in order to achieve an interim ordinance.

Ms. Holt stated that we could have a public hearing and then create an interim ordinance. Another option is to simultaneously hold a public hearing and present an interim ordinance.

Commissioner Collins suggested that a resolution be passed to authorize and fund a disparity study.

Ms. Holt offered the following clarification: Her report is not a substitute for a disparity study. She recommends passing an ordinance while simultaneously conducting a disparity study within a certain time frame and with a sunset date certain. The study will take approximately eighteen months. Ms. Holt further stated that the County has been trying to launch a multijurisdictional disparity study, which would save the County significant money.

Commissioner Maldonado inquired whether Chairman Steele expects to introduce an ordinance at the County Board meeting in September.

Chairman Steele replied in the affirmative.

Chairman Steele asked the Secretary to the Board to call upon the following registered public speakers.

1. Chun Lin Leonhar – Partner, Sonnenschein, Nath & Rosenthal
2. Florence Ax – Executive Director, Black Contractors Union
3. George Blakemore – Concerned Citizen

Chairman Steele adjourned the meeting.

Respectfully submitted,
Committee on Contract Compliance

Bobbie L. Steele, Chairman

Attest:

Michelle Harris, Secretary